



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,090	10/31/2003	Donald E. Weder	8404.017	1015

30589 7590 12/30/2004

DUNLAP, CODDING & ROGERS P.C.
PO BOX 16370
OKLAHOMA CITY, OK 73113

EXAMINER

PALO, FRANCIS T

ART UNIT	PAPER NUMBER
----------	--------------

3644

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,090

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/31/04</u> | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3644

DETAILED ACTION

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The disclosure is objected to because of the following informalities:

Appropriate correction is required.

Paragraph [0001] should be updated to reflect the patent status of Application 10/202,048.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3644

1. **Claims 1-44** are rejected under 35 U.S.C. 103(a),
as being unpatentable over Weder (US 5,493,809) 1996
in view of Weder (US 4,216,620) 1980.

Regarding claim-1:

Weder '809 teaches a sleeve to wrap potted plants (Abstract); the sleeve being constructed from any suitable material that is capable of being formed into a sleeve and wrapped about a pot (column-7, line 58-65), preferably polymer film of single or plural layers (column-7, line-7).

Weder does not specifically teach polymeric material having a texture or appearance of cloth as a construction material.

Weder '620 teaches a flower pot with lace pattern printed or embossed upon the plastic material (Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have constructed the Weder '809 sleeve from the printed or embossed lace patterned plastic material as taught by Weder '620, as Weder teaches sleeve construction from any suitable material that is capable of being formed into a sleeve and wrapped about a pot.

Art Unit: 3644

Regarding independent claim-10:

The discussion above regarding claim-1 is relied upon.

Weder '809 teaches polymer film as construction material, which encompasses the expanded core polymeric film as cited in the instant claim.

Disposition of the pot would be readily apparent to the use of the sleeve as cited.

Regarding independent claim-19:

The sleeve of the instant claim is a restatement of claim-1:

Regarding independent claim-28:

The sleeve of the instant claim is a restatement of claim-10:

Regarding independent claim-37:

The sleeve of the instant claim is encompassed by the sleeve of claim-1:

Regarding repeating claims 2, 11, 20 and 29:

The discussions above regarding the independent claims are relied upon.

Weder '809 recites in claim-2 the thickness cited in the instant claims.

Art Unit: 3644

Regarding repeating claims 3, 12, 21, 30 and 38:

The discussions above regarding the independent claims are relied upon.

Weder '620 teaches printing or embossing in the Abstract.

Regarding repeating claims 4, 13, 22 and 31:

The discussions above regarding the independent claims are relied upon.

Weder '620 teaches printing or embossing in the Abstract; read as, printing and embossing as cited in the instant claims.

Regarding repeating claims 5, 14, 23, 32 and 43:

The discussions above regarding the independent claims are relied upon.

The pattern registry as cited is capable of the printed material of Weder.

Regarding repeating claims 6, 15, 24, 33 and 44:

The discussions above regarding the independent claims are relied upon.

The pattern registry as cited is capable of the printed material of Weder.

Regarding repeating claims 7, 16, 25 and 34:

The discussions above regarding the independent claims are relied upon.

The pattern registry as cited is capable of the printed material of Weder.

Art Unit: 3644

Regarding repeating claims 8, 17, 26 and 35:

The discussions above regarding the independent claims are relied upon.

Weder '809 recites a closed lower end in claim-1 as cited in the instant claims.

Regarding repeating claims 9, 18, 27 and 36:

The discussions above regarding the independent claims are relied upon.

Weder '809 depicts a gusset in the sleeve lower end as cited in the instant claims.

Regarding claim-39:

The discussion above regarding claim-37 is relied upon.

Weder '809 depicts a sleeve having a detaching element as cited.

Regarding claim-40:

The discussion above regarding claim-39 is relied upon.

The sleeve of Weder is capable of the texture cited in the instant claim.

Regarding claims 41 and 42:

The discussion above regarding claim-37 is relied upon.

The sleeve of Weder is capable of the patterning as cited in the instant claims.

Art Unit: 3644

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-36 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,708,464.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant invention is encompassed by the conflicting independent claims, while the corresponding dependent claims are identical.

Claims 37-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10-17 of U.S. Patent No. 6,598,372.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are encompassed by the conflicting claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Magid teaches fabric-simulating laminated sheet material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3644

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
Art Unit 3644